

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ARMANDO L. FUNES

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-8609

Decision No. CU 6152

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by ARMANDO L. FUNES, in the total amount of \$18,000.00, based upon the asserted ownership and loss of real and personal property in Cuba. Claimant has been a national of the United States since naturalization on November 9, 1948.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

Claimant asserted that in 1954 he married Maria del Carmen Crespo, a Cuban national; and that he resided in Cuba prior to 1954 until departure in March 1970. Claimant stated that he jointly acquired and owned an interest in real estate in Santa Catalina, Havana, Cuba; that when leaving Cuba he also owned an interest in a savings account, personal property, such as household equipment and furniture in his residence and a 1954 Chevrolet automobile.

According to the community property laws of Cuba, the properties acquired by one or both spouses during the marriage with money of the marriage partnership or by the industry, salary or work of either or both spouses, and the fruits thereof, belong in equal parts to both spouses (see Claim of Robert L. Cheaney, et ux., Claim No. CU-0915). Accordingly,

the property discussed below will be deemed as having been owned by the claimant and his wife, since no evidence has been submitted to establish that such property was acquired by the claimant prior to the marriage, or by gift or inheritance. Inasmuch as there is no evidence that claimant's wife was a national of the United States at any time pertinent to this claim and no claim has been filed by her or on her behalf, her interests in the properties will not be considered here.

The claimant describes the real and personal property as follows:

<u>Property</u>	<u>Value</u>
Lot 18, block 4, Santa Catalina, Havana, 14 x 25 meters, valued at \$3,000.00, with 2-story house facing Calle Lazada del Norte Segunda #13201, with value of \$13,000.00 for a total of	\$ 16,000.00
Household furnishings; personal effects	2,000.00
1954 Chevrolet automobile	450.00
Bank account	<u>47.84</u>
Total	\$ 18,497.84

The claimant submitted a contract of sale executed in January 1960 as well as data pertaining to the construction of a house on the lot at the aforesaid location in Havana Province, Cuba. He has also submitted affidavits of persons who were former residents of Cuba with personal knowledge of his ownership interest in the said real and personal property; a bank account statement, receipts, 1954 automobile title certificate and shipping documents for personal property shipped by claimant and his wife to Cuba. A report concerning the claimant's residence in Santa Catalina was received by the Commission from sources abroad.

On the basis of the entire record, the Commission finds that under the community property laws of Cuba claimant herein, ARMANDO L. FUNES, owned a one-half interest in the aforesaid real and personal property.

On December 6, 1961, the Cuban Government published its Law 989 which effectively confiscated all assets, personal property and real estate, shares, stocks, bonds and securities of persons who had left the country. As stated, the record reflects that claimant and his wife left Cuba in March 1970.

The Commission finds, in the absence of evidence to the contrary, that the subject real and personal property was taken by the Government of Cuba on March 13, 1970, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Although the claim arose subsequent to the close of the period for filing claims of this nature against the Government of Cuba, the Commission has held that it will consider on their merits claims for losses sustained subsequent to the deadline, so long as consideration thereof does not impede the determination of claims which arose prior to the close of the filing period. (See Claim of Vivian Morales, Claim No. CU-8739.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

The record includes a detailed description of the lot with improvements consisting of a 2-story structure, affidavits and other material concerning the value of such property. Additionally, claimant has submitted a detailed list of the household furnishings and equipment and shipping documents with a valuation report, as well as invoices concerning the automobile and certain items of personal property.

Based upon the entire record, including evidence available to the Commission concerning the value of similar properties in Cuba, the Commission finds that the evaluation most appropriate to the real and personal property, subject of this claim, is that evaluation given by claimant and the affiants with personal knowledge of the properties in question; and that such evaluation is fair and reasonable, and is consistent with the evaluation of like properties in Santa Catalina, Havana, and other areas of Cuba.

Accordingly, the Commission finds that on the date of loss the real and personal property, subject of the claim, had a total value of \$18,497.84 and concludes that claimant, pursuant to the community property laws of Cuba, suffered a loss of \$9,248.92 within the meaning of Title V of the Act.


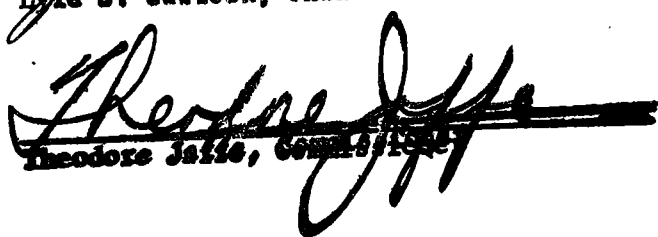
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that ARMANDO L. FUNES suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Thousand Two Hundred Forty-eight Dollars and Ninety-two Cents (\$9,248.92) with interest thereon at 6% per annum from March 13, 1970 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**APR 7 1971**

  
Lyle S. Garlock, Chairman  
  
Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, (1970).)

CU-8609